

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AMY SILVIS, on behalf of herself and all others
similarly situated,

Plaintiff,

v.

AMBIT ENERGY, L.P.; AMBIT ENERGY, L.P.,
i/t/d/b/a AMBIT TEXAS, LLC; AMBIT TEXAS,
LLC; AMBIT NORTHEAST, LLC, i/t/d/b/a AMBIT
ENERGY; AMBIT ENERGY; AMBIT ENERGY
HOLDINGS; AMBIT ENERGY HOLDINGS,
i/t/d/b/a AMBIT NORTHEAST, LLC; AMBIT
HOLDINGS, LLC; AMBIT HOLDINGS, LLC,
i/t/d/b/a AMBIT ENERGY HOLDINGS, LLC;
AMBIT ENERGY HOLDINGS, LLC, i/t/d/b/a
AMBIT ENERGY; and AMBIT ENERGY
HOLDINGS, LLC, i/t/d/b/a AMBIT,

Defendants.

Civil Action No.
2:14-cv-05005-ER

Jury Trial Demanded

**DEFENDANTS' MOTION FOR LEAVE TO FILE A REPLY BRIEF
IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED CLASS ACTION COMPLAINT**

Defendants Ambit Energy, L.P.; Ambit Energy, L.P. d/b/a Ambit Texas, LLC; Ambit Texas, LLC; Ambit Northeast, LLC; Ambit Northeast, LLC, d/b/a Ambit Energy; Ambit Energy; Ambit Energy Holdings; Ambit Energy Holdings d/b/a Ambit Northeast, LLC; Ambit Holdings, LLC; Ambit Holdings, LLC d/b/a Ambit Energy Holdings, LLC; Ambit Energy Holdings, LLC d/b/a Ambit Energy; and Ambit Energy Holdings, LLC d/b/a Ambit hereby move this Honorable Court for leave to file a reply brief in support of their Motion to Dismiss Plaintiff's Amended Class Action Complaint [Doc. Nos. 19 & 20] and to respond to arguments raised in Plaintiff's Response in Opposition to Defendants' Motion to Dismiss [Doc. No. 23.] A copy of the proposed Reply Brief is attached as Exhibit 1 to this Motion.

Respectfully Submitted,



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DATE: January 27, 2015

Attorneys for Defendants.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AMY SILVIS, on behalf of herself and all others
similarly situated,

Plaintiff,

v.

AMBIT ENERGY, L.P.; AMBIT ENERGY, L.P.,
i/t/d/b/a AMBIT TEXAS, LLC; AMBIT TEXAS,
LLC; AMBIT NORTHEAST, LLC, i/t/d/b/a AMBIT
ENERGY; AMBIT ENERGY; AMBIT ENERGY
HOLDINGS; AMBIT ENERGY HOLDINGS,
i/t/d/b/a AMBIT NORTHEAST, LLC; AMBIT
HOLDINGS, LLC; AMBIT HOLDINGS, LLC,
i/t/d/b/a AMBIT ENERGY HOLDINGS, LLC;
AMBIT ENERGY HOLDINGS, LLC, i/t/d/b/a
AMBIT ENERGY; and AMBIT ENERGY
HOLDINGS, LLC, i/t/d/b/a AMBIT,

Defendants.

Civil Action No.
2:14-cv-05005-ER

Jury Trial Demanded

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO FILE
REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED CLASS ACTION COMPLAINT**

By way of the attached motion, Defendants Ambit Energy, L.P.; Ambit Energy, L.P. d/b/a Ambit Texas, LLC; Ambit Texas, LLC; Ambit Northeast, LLC; Ambit Northeast, LLC, d/b/a Ambit Energy; Ambit Energy; Ambit Energy Holdings; Ambit Energy Holdings d/b/a Ambit Northeast, LLC; Ambit Holdings, LLC; Ambit Holdings, LLC d/b/a Ambit Energy Holdings, LLC; Ambit Energy Holdings, LLC d/b/a Ambit Energy; and Ambit Energy Holdings, LLC d/b/a Ambit, by and through their undersigned counsel, hereby seek leave to file the attached reply brief in support of their Motion to Dismiss Plaintiff's First Amended Class Action

Complaint.¹

It is well-established that this Court and its sister courts have previously freely granted leave to file reply briefs. See Hruban v. Steinman, 2001 U.S. Dist. LEXIS 4906 (E.D. Pa. Apr. 19, 2001) (Robreno, J.), aff'd mem. 40 F. App'x 723 (3d Cir. 2002); United States v. Norris, 753 F. Supp. 2d 492, 500 (E.D. Pa. 2010) (Robreno, J.); McCutchen v. Sunoco, Inc., 2002 U.S. Dist. LEXIS 15426 (E.D. Pa. Aug. 16, 2002) (Reed, J.), aff'd 80 F. App'x 287 (3d Cir. 2003).

A reply brief is necessary here to address certain legal and factual issues raised in Plaintiff's Response in Opposition. For example, in her opposition papers, Plaintiff for the first time claims that Defendants breached the covenant of good faith and fair dealing by failing to exercise their discretion to set prices in good faith. In her opposition papers, Plaintiff likewise newly avers that it is only proper to decide class issues after class certification and that the attack on her available remedies is premature. Defendants should be afforded the opportunity to respond to these novel arguments.

Moreover, in her opposition papers, Plaintiff makes much of her argument that the Residential Disclosure Statement at issue in this case is fully integrated and contains language that purportedly requires Defendants to price energy according to market factors. It is clear that Plaintiff makes these assertions in order to escape the discretion given to Defendants to set prices under the Terms of Services. Defendants wish to reply to Plaintiff's argument because doing so would materially assist the Court with the overall resolution of the Motion to Dismiss.

Finally, Plaintiff avers in her opposition papers that Defendants refused to confer

¹ Defendants attempted to contact Plaintiff's counsel twice to obtain consent to file this Motion. As of the time of this filing, Plaintiff has not yet responded to Defendants. Accordingly, Defendants file this Memorandum in Support in compliance with Local Rule 7.1(c) requiring every motion not certified as uncontested to be accompanied by a brief containing a concise statement of legal contentions and authorities relief upon in support of the motion.

with her as to which Ambit Defendant is allegedly responsible for the claimed conduct at issue. Defendants should be permitted the opportunity to respond to this allegation against them and clarify the record.

Accordingly, in light of the above, Defendants respectfully submit that a reply brief is necessary under the instant circumstances and respectfully request that the Court grant their Motion for Leave to File a Reply Brief in Support of their Motion to Dismiss Plaintiff's First Amended Class Action Complaint.

Respectfully Submitted,



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DATE: January 27, 2015

Attorneys for Defendants.

CERTIFICATE OF SERVICE

I, Christina O. Hud, hereby certify that on this 27th day of January 2015, I electronically filed the foregoing DEFENDANTS' MOTION FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT, which will send notification of such filing to counsel of record for all parties.

Respectfully Submitted,



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